INDEX

Page

PETITION FOR WRIT.

I. Summary and Short Statement of Matters Involved 2

II. Reasons relied upon for allowance of writ 8

III. Why this Court has jurisdiction 17
Federal question timely Raised 20
Brief Supporting Petition for Writ 23

1 Accompanying brief and petition are plaintiffs' brief in Court of Appeal, "Exhibit A," and plaintiffs' brief supporting application for writ of certiorari to the Supreme Court of Louisiana, "Exhibit B." 23

2. The physical facts used for decision of Court of Appeal could not alone show negligence 25

3. Neither the Trial Court nor Court of Appeal could disregard the testimony of the witnesses in the cases under the guise of contradictions therein 24

4. The vital issue of negligence was not dtermined either by the Court of Appeal or the trial Court 26

CASES AND TEXT CITED

Adams v. Veal-Winn Co., 134 So. Rep. 264 11

American Ry. Express Co. v. Levee, 263 U. S. 19, 44 Sup. Ct. 11, 12. ..... 19, 21

Boyd v. United States, 116 U. S. 616, 6 Sup. Ct. 524 .. 9

Buchner v. City of New Orleans, 112 La. Rep. 599, 601 16

Chapman v. Crane, 123 U. S. 540, 8 Sup. Ct. 211, 215 8

Chicago, Burlington & Quincy Railroad v. City of Chicago, 166 U. S. 226, 17 Sup. Ct. 581 ..... 8, 20

Churchill v. Texas & Pacific R. Co. 151 La. Rep. 726 .. 15

Dulane v. Breaux, 174 La. Rep. 43 15

Fridge v. Talbert, 180 La. Rep. 937, 948 24

Georgia Railway & Electric Co. v. City of Decatur, 295 U. S. 165, 55 Sup. Ct. 701 9

Huetberg v. Anderson, 97 N. E. 216 8

Page

Hebert v. State of Louisiana, 272 U. S. 312, 47 Sup. Ct. 103, 104 9
Logrand v. Dugan, 196, So. 564 ..... 12, 25
McMichael v. Illinois Cent. R. Co. 110 La. Rep. 18, 19 ..... 14, 25
Maritzky v. Shreveport Ry. Co. 144 La. Rep. 692 15
Morgan v. Dugan, 195 So. 128 25
Postal Telegraph Cable Co. v. City of Newport, 247 U. S. 464, 38 Sup. Ct. 566, 570 9
Jacob v. Edwards, 171 So. Rep. 165, 167 12
Rigby v. Aetna Casualty & Surety Co. 151 So. 119 16
Rogers v. Silver Fleet, 180 So. 185 25
Saunders v. Shaw, 244 U. S. 317, 37 Sup. Ct. 638, 640 ..... 19, 20
Scott v. McNeal, 154 U. S. 34, 14 Sup. Ct. 1108, 1112 9
Soon Hung v. Crowley 113 U. S. 703, 5 Sup. Ct. 730, 734 10
Stout v. Nehi Bottling Co. 146 So. 857 25
Webb v. Lambert, 128 So. 317 24
Western & A. R. R. v. Henderson, 279 U. S. 639, 49 Sup. Ct. 445 ..... 14, 25
Winn v. Veal-Winner Co. 134 Co. 264 11
Wright v. Petty, 7 La. App. 584, 586 14

STATUTES AND TEXTS CITED

28 U. S. C. A., Sec. 344 (b)—Sec. 237 (b), Judicial Code 18, 22
Constitution of United States, Due Process and Equal Protection of Law Provisions of Four teenth Amendment 2, 8
Constitution of Louisiana of 1921, Art. 7, Sec. 11 20
Constitution of Louisiana of 1921, Art. 7, Sec. 1 25
Code of Practice of Louisiana, Art. 539 ..... 16, 25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No.----------

ALFRED SIDNEY BARTON,
Petitioners,

vs.

THE PHELAN COMPANY.

and

ROBERT L. PACE,
Petitioners,

vs.

THE PHELAN COMPANY.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE FIRST CIRCUIT OF THE STATE OF LOUISIANA AND SUPPORTING BRIEF

To the Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners, Alfred Sidney Barton and Robert L. Pace, respectfully petition this Honorable Court for a writ of certiorari to the Court of Appeal of the First Circuit of the State of Louisiana at Baton Rouge, Louisiana, to review the final decree of that Court in the above causes. A certified transcript of the record in said causes, including therein the proceedings in the said Court of Appeal and in the Supreme Court of the State of Louisiana, accompanies this petition in accordance with the rules of the Supreme Court of the United States.

I

SUMMARY AND SHORT STATEMENT OF MATTERS INVOLVED.

This petition involves the questions of whether the Court of Appeal of the First Circuit of Louisiana, in the decree it rendered in these cases (200 So. Rep. 508), deprived either or both of petitioners of liberty or property without due process of law or denied them or either of them the equal protection of law, in violation of the Fourteenth Amendment of the Constitution of the United States. As alleged by them in their application for rehearing in said Court of Appeal and in their application to the Supreme Court of the State of Louisiana, they now aver that, for reasons specifically set forth herein, the decree of the Court of Appeal deprived each of them of property and liberty without due process of law and denied each of them the equal protection of law, in violation of the 14th Amendment of the Federal Constitution.

The Complaint or petition of each of plaintiffs in instituting these suits avers substantially in part:

That about 7 o'clock, p. m. on the night of October 4th, 1938, on the Evangeline paved highway, about five miles west of Kinder, Louisiana, and about 500 yards east of the Calcasieu River bridge, through the negligence of the driver of defendant's large trailer truck then traveling west there was a collision between the Ford Sedan in which plaintiffs were riding, and being driven by plaintiff Barton, resulting in said injuries

to plaintiffs. That at the time of and immediately before the said truck was being operated at a speed of about sixty miles an hour, with glaring headlights and in a reckless manner; that when the driver of Barton car being partly blinded by the bright lights on truck and seeing the truck swerving over to the south side of the highway, he began to pull his car over more to the south side of the highway; that when the collision occurred the left wheels of truck were about four or five feet south of the middle of the pavement of highway and the right wheels of the Ford car were a few inches over on the south shoulder of the highway.

That immediately after said collision the driver of truck stated that it was on account of a yearling or cow in the highway ahead of him which caused him to swerve his truck to the south side of the highway; but plaintiffs aver that whatever cow the truck driver saw in the highway was seen or could have been easily seen by him on proper look out in time to have stopped said truck without chasing her down the highway and before reaching the point where said cow jumped across the highway.

The answer of defendant denies such of said allegations of plaintiffs not expressly admitted. It admits the collision; that the "Ford stopped within about one hundred and fifty feet (150) from the point of collision." The answer further states:

"It is admitted that the defendant driver did see the cow on said highway and that he could have stopped

his truck had there been any danger of striking said cow, but it is averred that no such danger presented itself." That "prior to and at the time of noticing the said cow, said driver saw approaching from the west the lights of another vehicle;" that this crossing of cow and approach of the other automobile caused the driver of truck to take the precautions of pulling the truck "to the extreme right side of the road" in order "to give as much room as possible for said automobile to pass said cow and truck in safety, but said automobile in attempting to dodge said cow made an effort to pass between said cow on his right and said truck on his left, and in doing so said automobile's right front fender and wheel struck said cow, and then it skidded into the left rear or drive wheel of the truck."

Defendant's answer avers that the excessive speed and reckless manner in which plaintiff Barton was driving his said car caused the said collision.

Defendant's answer in the case of Robert L. Pace avers in part: "that plaintiff did not, either prior to or at the time of said accident, protest against the negligent manner in which said automobile was being operated, but on the contrary plaintiff acquiesced, condoned, approved and consented to each and every act of negligence of said driver of said automobile, and is, therefore, guilty of negligence which was the sole and primary cause of said accident from which his injuries resulted, and such negligence bars his right to recover from defendant.

In the alternative, defendant's answer avers that the said negligence of plaintiffs contributed to the said accident and "was the proximate cause thereof."

These two cases were consolidated in the Court of original jurisdiction for trial and appeal. They are actions in tort based upon the same motor vehicle collision between a Chevrolet Trailer Truck of defendant and a V-8 Ford Sedan being driven by plaintiff Barton, who sued defendant for the sum of $22,500 for personal injuries causing the amputation of his left arm. Plaintiff Pace sued defendant, Phelan Company, for $15,-250.00, for injuries to his eyes and other parts of his body.

The introduction of testimony was finally concluded in these cases on December 12, 1939, and the cases were submitted for decision on briefs, that of defendant being filed on April 22, 1940. On May 9, 1940, the trial Court rendered judgment supported by short written opinion, rejecting the demands of plaintiffs. The testimony of about 28 witnesses, five of whom were eye witnesses to the collision and three of whom were apparently disinterested witnesses who came to the scene of accident within 25 seconds thereafter, was all disposed of or dispensed with by the following statement in said opinion:

"The evidence in this case is so contradictory, and in the opinion of the Court so colored by the witnesses on both sides that the Court is compelled to say in the main it must be totally disregarded." After making that

holding the opinion of the trial Court states as a basis for its judgment:

"The evidence shows that the wheel of the truck was so damaged by the impact with the automobile that the brake locked, causing the wheel to skid on the pavement, making a mark on the pavement which was clearly visiable both to the witnesses and which shows clearly in the pictures which were presented in Court.

"The skid mark started on the North side of the black or center line, showing beyond any question of a doubt that the collision took place not on the South or Barton's side of the black line, but on the North or Phelan's side of the black line. * *"

Nothing in the opinion of the trial Court indicated that plaintiff Barton had done or failed to do anything constituting negligence, contributing to the accident. Its opinion did not hold that the negligence of the truck driver had not caused the accident.

JUDGMENT OF COURT OF APPEAL

The judgment and opinion of the Court of Appeal in said cases (200 So. Rep. 508), although making some illogical, disconnected remarks beyond the holding of the trial Court, affirmed the holdings of the trial Court, and disregarded and refused to mention or discuss any of the testimony of the five eye witnesses to the accident or any of the much weighty testimony favorable to plaintiffs. The questions of negligence and contributory

negligence made the vital issues in the cases, are not determined nor discussed by the Court of Appeal in its judgment or otherwise. So far as what that Court stated there is nothing to show that any of the many eye witnesses testified nor what they testified.

It refused to mention or to discuss the testimony, which showed the Barton car was partly on the south shoulder of the highway at time of collision, or which showed the Barton car could not have struck the Phelan truck on the north side of the highway because the front end of Barton car was not struck in the collision. Nothing supports either the decision of the Court of Appeal of the First Circuit of Louisiana or that of the 14th District Court of that State in these cases, other than the fact that either before the collision or immediately after same the long, heavy trailer truck of defendant made a sudden abrupt swerve to its left toward the south, and, after going just south of the center of pavement continued on the south side almost parallel with middle black line (as shown by skid marks) for about fifty feet, when the truck was about four feet south of the middle black line, whereupon it abruptly swerved back toward the north side of the highway. Copies of the printed brief of plaintiffs used in the Court of Appeal, marked "Exhibit A" are filed along with this application. By reference to pages 8 and 9 of that brief a picture of the said skid marks and scene of accident with explanation thereof can be observed.

II

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

1. The judgment of the Court of Appeal of the First Circuit of the State of Louisiana (200 So. Rep. 508) was pronounced or rendered without any judicial determination of the facts which alone can support such a judgment, and, therefore, the said judgment is merely the arbitrary edict of that Court and is as much wanting in due process of law and equal protection of law as though the plaintiffs had not been afforded the opportunity to introduce testimony or to argue the said cases.

Chicago, Burlington & Quincy Railroad v. City of Chicago, 166 U. S. 226, 17 Sup. Ct. 581, 14 Law E. 979.
Huetberg v. Anderson, 97 N. E. 216.
Chapman v. Crane, 123 U. S. 540, 8 Sup. Ct. 211, 215.

2. While plaintiffs were permitted by the trial Court to introduce such relevant testimony as they offered, neither the trial Court nor the Court of Appeal discussed nor considered the important, vital parts of said testimony. It is established beyond dispute by many decisions of the United States Supreme Court that the rejection of any material testimony, which might change the results of decision in the case, violates the due process provisions of the 14th Amendment of the Federal Constitution. Those decisions equally support the contention that to permit the introduction of such testimony, and then to arbitrarily refuse to consider

same, likewise violates the prohibitions in said amendment against denial of due process and equal protection of law. To hold the Court must allow the introduction of relevant testimony which may change the results, and then hold that after it is introduced the said Court may arbitrarily refuse to consider same, can find no just nor logical support.

Boyd v. United States, 116 U. S. 616, 6 Sup. Ct. 524.
Scott v. McNeal, et al., 154 U. S. 34, 14 Sup. Ct 1108.
Georgia Railway & Electric Co. v. City of Decatur, 295 U. S. 165, 55 Sup. Ct. 701.
Postal Telegraph Cable Co. v. City of Newport, 247 U. S. 464, 38 Sup. Ct. 566, 570.

3. These prohibitions contained in the Fourteenth Amendment of the Federal Constitution against depriving one of property or liberty without due process of law and the denial of equal protection of law, "extend to all acts of the state, whether through its legislature, its executive, or its judicial authorities."

Scott v. McNeal, 154 U. S. 34, 14 Sup. Court 1108, 1112.
Hebert v. State of Louisiana, 272 U. S. 312, 47 Sup. Ct. 103, 104.

4. The motives of courts, like that of the legislature, when "considered as to the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural reasonable effect of their enactments" or judgments. "The diverse character of such motives, and the impossibility of penetrating into the hearts of men and ascertaining the truth, preclude all

such inquiries as impracticable and futile."

Soon Hing v. Crowley, 113 U. S. 703, 5 Sup. Ct. 730, 734.

The decisions of the Trial Court and the Court of Appeal in these cases abandoned the usual custom of Courts, to take up in some kind of order the testimony of the witnesses and the questions of law and give reasonable time and consideration thereto. It disregarded vital judicial admissions made in the answer of the defendant, either showing or tending to show negligence on part of the driver of the truck of defendant. It disregarded most of the vital testimony in the cases, and adopted the physical fact that the truck skidded from its side of the highway to the south side as "showing beyond any question of a doubt that the collision took place" on the north or Phelan side of the said highway, and then without considering the emergency rule of law of the State of Louisiana, or holding either of plaintiffs guilty of any negligence, rejected their demands. Under the above rule laid down by this Honorable Court, the motives of the said Court in so acting and ruling should be held done for the deliberate purpose of denying plaintiffs the equal protection of law and depriving them of their rights, property and liberty without due process of law.

5. The judicial admissions made by defendant in its answer states that its driver saw the cow in the highway ahead of him long enough to have stopped; that "prior to and at the time of noticing the said cow, said driver

saw approaching from the west the lights of another vehicle;" that said truck driver then took the precaution of pulling the truck over to "the extreme right side of the road" in order "to give as much room as possible for said automobile to pass said cow and truck in safety, but said automobile in attempting to dodge said cow made an effort to pass between said cow *on his right and said truck on his left*, and in doing so said automobile's right front fender and wheel struck said cow, and then it skidded into the left rear or drive wheel of the truck."

Under the laws of the State of Louisiana the said defendant is bound by the foregoing judicial admissions.

Winn v. Veal-Winn Co., 134 So. 264.
Adams v. Bell Motors, 121 So. 345.

These judicial admissions show that plaintiff Barton was in an emergency; that a cow and a large truck in close proximity to him were coming toward him; that the cow was on his right and the truck on his left, both on the pavement; that the truck driver seeing the situation attempted to make room, but did not stop as defendant admits he could have done; that Barton in attempting to avoid the danger struck the cow and skidded over and struck the truck.

The evidence of the eye witnesses in the case shows Barton did not see the cow until it was too late for him to slow his car down enough to avoid the accident. It shows that the driver of the truck did see the danger in time to slow his truck down and avoid the accident, but

the driver of the truck made no effort to slow the truck down although he saw the cow in the road first as much as 200 feet ahead of him; that the truck was within a few feet of the cow when she jumped across the road. The evidence does not show Barton's car struck the cow. It shows the contrary.

Under the law of the State of Louisiana, especially what is called the emergency rule, defendant is liable in these cases though it be found that the Barton car did strike the truck of defendant on the north side of the said highway.

Logrand v. Dugan, 196 So. Rep. 564, La. App.
Jacob v. Edwards, 171 So. Rep. 165, 167, La. App.

The great effort made in behalf of plaintiff to get the Court of Appeal to determine the evidence applicable to this emergency rule was of no avail.

6. The more the decision of the Court of Appeal is considered and its failure to discuss the vital issues and testimony of witnesses thereon, and the great emphasis it places upon matters of no importance, the more it will appear that it is merely an edict, depriving plaintiffs of their rights. To an extent its style beclouds the effects of the said decision. As pointed out in the application for rehearing and in application to the State Supreme Court for writ of certorari, said opinion of the Court of Appeal gives great enough weight to the clearly worthless testimony of witness LaFasse to overturn that of about seven witnesses who testified to finding shattered glass at point the truck went farthest to the south

side of the highway. Yet, the testimony of Lafasse, even as recited by said opinion, did not state whether or not there was broken glass at point skid marks went farthest to south. This holding is cited to show the determination of the organ of the Court preparing said decision to decide the cases against plaintiffs without a fair and full consideration of the facts.

7. There are many special and important reasons why the writ of certiorari herein sought should be granted, most of which are suggested in the foregoing portions of this application. The amount of work and expenditure required to make an application to this Honorable Court for a writ of certiorari, in a case involving such a large record usually makes same practically impossible. Therefore, any disposition to arbitrarily decide the case as the Court desires is encouraged or augmented in such cases. While it is well known by all able and honest Judges and lawyers, that occasionally such unfair, arbitrary and illegal decisions are rendered, yet there have been few efforts made to stop or expose said abuses through applications for writ of certiorari to this Honorable Court. A decision in these cases by this Honorable Court on the issues herein presented should be of tremendous value and force in encouraging just decisions in Courts.

8. The physical fact of the skidding of truck from its side of the highway, without strong corroborating testimony, would not show that the Barton car struck the truck on the north side of the highway. It would

require very strong proof to show the light Barton car could have so injured the heavy truck of defendant, as to cause the heavy truck to suddenly swerve to its left, while the Barton car moved on 150 feet farther down the highway. Such appears impossible. The holding of the Court of Appeal that such skidding was so convincing that no testimony of eye witnesses or other physical facts could impair same, is contrary to law, reason physics or experience.

The contrary was held in the following cases:

Western & A. R. R. v. Henderson, 279 U. S. 639, 49 Sup. Ct. 445.
McMichael v. Illinois Central R. Co., 110 Louisiana Rep. 18, 19.
Wright v. Petty, 7 La. App. 584, 586.

The so-called physical facts adopted and urged with such apparent certainty by the Court of Appeal could not prove that the Barton car struck the truck and caused it to suddenly swerve and go in the direction from which the Barton car came. The testimony of four eye witnesses to the contrary, which was corroborated by other witnesses and several strong physical facts, should have been considered by the Court of Appeal. The testimony of witnesses that the driver of the truck admitted his dodging the cow caused the collision should have been considered. The testimony and facts showing that the truck driver and witness Vandergriff had given false testimony should have been considered. The fact that no weight was given in favor of plaintiffs by the Court of Appeal to any testimony introduced, indicates the extreme unfairness of the said decision.

9. The decisions and jurisprudence of the United States Supreme Court authorizes this Court to read and consider any and all the testimony in these cases to determine the Constitutional or Federal questions presented herein.

10. The evidence in these cases does not disclose that any negligence or carelessness of plaintiff Pace aided in causing his said injuries.

Pace was riding when injured as an invited guest. The law of the State of Louisiana and the jurisprudence of its Supreme Court is to effect that the invited guest is not responsible for the negligence or contributory negligence of the driver of motor vehicle in which he is riding, unless he knew of same in time to take some action to avoid injury thereby and failed to act to avoid the danger.

Churchill v. Texas & Pacific R. Co., 151 La. 726.
Delaune v. Breaux, 174 La. 43.
Maritzky v. Shreveport Ry. Co., 144 La. 692.

The decision of the Court of Appeal in the cases of petitioners in no manner held or stated that there had been any negligence acquiesced in or condoned by said Pace. His demands were simply refused by that Court without any determination thereof. Plaintiff Barton's claims were likewise refused without a determination of the vital question of negligence in the case.

(See 200 So. Rep. 508.)

11. The law of the State of Louisiana is to effect

that the defense of contributory negligence must be alleged and established by a fair preponderance of evidence for it to avail the pleader or to prevent the recovery of a claimant in an action on a tort.

Buechner v. City of New Orleans, 112 La. Rep. 599, 601.
Rigby v. Aetna Casualty & Surety Co., 151 So. 119 (La. App.)

The evidence in these cases does not disclose any negligence or contributory negligence on the part of either of plaintiffs. There is no such holding made by the Court of Appeal or the trial Court. The said Courts utterly failed to determine the facts and issues in these cases.

12. The law and the jurisprudence of the State of Louisiana required the said Court of Appeal to "decide all the points in the controversy between the parties."

Code of Practice of Louisiana, Art. 539.

The Constitution of Louisiana, Article 7, Section 1, in part provides: "The judges of all courts shall refer to the law and adduce the reasons on which every definitive judgment is founded." In its decision in the cases of petitioners herein the Court of Appeal of the First Circuit of Louisiana, failed to comply with these mandates of the Code of Practice and Constitution of Louisiana. It's said decision did not comply with that jurisprudence of the Courts of the various States of the United States nor with that of the Federal Courts. Under such an arbitrary and incomplete decree or de-

cision as rendered by the Court of Appeal in these cases, if held not to infringe or violate the equal protection and due process of law provisions of the 14th Amendment of the United States Constitution, it would be left in the power of that or any other Court to render a binding decree in any way it might desire, regardless of the evidence.

13. There can be no legal, logical or just reason assigned why there should be any distinction made by the United States Supreme Court or any other Court between an arbitrary act or judgment authorized by a statute or act of the State Legislature or an arbitrary decree rendered by a Court without any legislative sanction. Had the Louisiana Legislature enacted a law authorizing the Court of Appeal of Louisiana to decide a question of fact anyway it desired to decide same, to refuse to mention or consider any testimony or evidence it might desire to refuse to consider, and even to refuse to consider any question of law presented by a party to a law suit, there is not a question but that the Supreme Court of the United States would hold such a law a violation of the equal protection and due process of law provisions of the Federal Constitution. Surely it cannot be held that Court of Appeal without legislative sanction can do that which it could not do with such sanction.

III.

WHY THIS COURT HAS JURISDICTION.

1. The law or statute which makes it competent for this Court to issue or grant the writ of certiorari herein

sought, directed to the Court of Appeal of the First Circuit of the State of Louisiana, is Section 237 (b) of the Judicial Code (28 U. S. C. A., Section 344 (b).

2. That the arbitrary decree of the said Court of Appeal, which failed to consider the vital testimony and issues in these cases of petitioners, deprived each of petitioners of liberty and property and denied each of them the equal protection of law, and thereby violated the due process of law and equal protection of law provisions of the Fourteenth Amendment of the Constitution of the United States.

3. The decree of the Court of Appeal of First Circuit of the State of Louisiana was entered and rendered on March 4, 1941. Petitioners herein promptly and timely filed a petition for a rehearing in said causes in that Court. Among the matters urged in said application for a rehearing was the contention that by said decree plaintiffs and petitioners had been deprived of their liberty and property without due process of law and denied the equal protection of law, in violation of the 14th Amendment of the Constitution of the United States. The petition or application for rehearing was denied without comment by said Court of Appeal on April 14, 1941. Within the time provided by the laws of the State of Louisiana, plaintiffs and petitioners filed petition and application in the Supreme Court of the State of Louisiana therein stating that in various specified respects the decree of the Court of Appeal had violated the prohibitions of the 14th Amendment of the Constitution of

the United States, in that said decree had deprived them of their property and liberty without due process of law and had denied them the equal protection of law. Notwithstanding, that petitioners strenuously urged the Supreme Court of Louisiana to declare whether or not they had thus been deprived of the due process and equal protection of law, the Supreme Court of Louisiana on May 26, 1941, refused to grant a writ of certiorari in these cases, its holding thereon being in full as follows: "On the facts found by the Court of Appeal, the Judgment is correct."

4. "Of course the limit of time for applying to this court was from the date when the writ of certiorari was refused" in the State Supreme Court.

American Ry. Express Company v. Levee, 44 Sup. Ct., 11, 12, 263 U. S. 19.

5. The constitutional question of denial of due process and equal protection of law being based upon the decree of the Court of Appeal of First Circuit of the State of Louisiana did not have to be presented to that hibitions of the 14th Amendment of the Constitution of Court in these cases.

Saunders v. Shaw, 244 U. S. 317, 37 Sup. Ct. 638,

FEDERAL QUESTION SUFFICIENTLY AND TIMELY RAISED.

6. However, the constitutional questions invoked herein were presented to the Court of Appeal of the First Circuit of Louisiana as soon as it was possible to present same, and that in the application for a rehearing. That Court, in simply refusing the application for rehearing, passed upon said constitutional questions unfavorably to plaintiffs.

Saunders v. Shaw, 244 U. S. 317, 37 Sup. Court 638, 640.
Chicago, Burlington & Quincy Railroad v. City of Chicago, 166 U. S. 226, 17 Sup. Ct. 581, 582.

7. Section 11 of Article 7 of the Constitution of Louisiana of 1921, shows the extent the Supreme Court of Louisiana may through writ of certiorari review a decision of the Courts of Appeal of Louisiana. That section states in part: "It shall be competent for the Supreme Court to require by writ of certiorari, or otherwise, any case to be certified from the Courts of Appeal to it for review, with the same power and authority in the case as if it had been carried directly by appeal to the said court; provided, that where the application is based solely upon the ground that the decision of the question of law involved is in conflict with the jurisprudence of the Supreme Court or other Court of Appeal upon a question not yet decided by the Supreme Court, and it is found that such is a fact, then the application shall be granted as a matter of right."

In the instant cases the Supreme Court of Louisiana,

in the words commonly used by it in refusing such writs, said: "On the facts found by the Court of Appeal, the Judgment is correct. Writ refused."

The effect of such action on part of the Supreme Court of Louisiana was determined by this Honorable Court in the case of *American Ry. Express Co. v. Levee*, 263 U. S. 19, 44 Sup. Ct. 11.

8. While the application of plaintiffs to the Louisiana Supreme Court, alleged that each of plaintiffs had by the decision of the Court of Appeal been deprived of his liberty and property without due process of law and denied the equal protection of law, and prayed for the said Court to rule upon and uphold said contentions, it was not necessary that they make such allegations therein. The denial of the application was a rejection of said contentions. Plaintiffs could do no more.

9. Plaintiffs as an aid to show why this Court has jurisdiction in these cases, adopts all those reasons under the foregoing heading, "Reasons Relied Upon for Allowance of this writ," stated in this petition for writ.

QUESTIONS PRESENTED.

The foregoing parts of this application or petition for writ are adopted to show the questions presented herein.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari issue from this Court and under

its seal, directed to the Court of Appeal of the First Circuit of the State of Louisiana, which is domiciled at Baton Rouge, Louisiana, commanding the said Court of Appeal to certify and send to the Supreme Court of the United States a full and complete transcript of the record and the proceedings in and of the said Court of Appeal in the aforementioned cases of Alfred Sidney Barton versus The Phelan Company and Robert L. Pace versus The Phelan Company, to the end that said causes may be reviewed and determined by this Court as provided by statutes of the United States and in particular by Section 237 (b) of the Judicial Code (28 U. S. C. A., Sec. 344 (b). Petitioners pray that the said judgment of the Court of Appeal of the First Circuit of the State of Louisiana be reversed and they each be awarded judgment against the defendant, The Phelan Company, in the sums and amounts to which they are legally and justly entitled. They pray for general relief.

JULIUS T. LONG,

P. O. Address,
Shreveport, La.

Attorney for Petitioners.